

LEGAL REVIEW 2019A

Kentucky General Assembly 2018 Session

New Kentucky Statutes (2018)

The 2018 Kentucky General Assembly was a “long” session. EFFECTIVE JULY 14, 2018, unless otherwise indicated.

KENTUCKY SENATE BILLS

SB 3 CRIME VICTIMS RIGHTS

"Are you in favor of providing constitutional rights to victims of crime, including the right to be treated fairly, with dignity and respect, and the right to be informed and to have a voice in the judicial process?" *CONSTITUTIONAL AMENDMENT
CURRENTLY UNDER CHALLENGE*

SB 19 SEX OFFENSES

Amends KRS 510.020 (Lack of consent)
Unable to communicate consent/unable to understand act
Amends KRS 510.050-510.090 (Rape)
Moved Intellectual Disability from Rape/Sodomy 3rd to Rape/Sodomy 2
Amends KRS 510.110 (Sexual Abuse, first)
Moved Intellectual Disability to Sexual Abuse 1

SB 30 CRIME VICTIM RIGHTS

This is a companion statute to SB 3 and will only take effect if SB 3 survives challenge and becomes law.

It serves to make the Constitutional Amendment an operational law and to provide specifics. KRS 421.500 - KRS 421.576

SB 57 TERRORISM

Adds definitions to KRS 411.025 and civil liability for terrorism.
Adds a new crime of terrorism under KRS 525.045.
Allows for forfeiture of real and personal property to satisfy a civil judgement.

SB 109 SEX OFFENSES

Adds “any body part” to the definition of Deviate Sexual Intercourse – in addition to a foreign object.

Adds “any body part” to the definition of Sexual Intercourse

KRS 510.010

SB 116 MOTOR VEHICLES

Use of a truck platoon of 2 trucks only.

Must notify the Kentucky State Police and approved by Dept. of Vehicle Regulation.

KRS 281.010, KRS 281.764

SB 130 UNIVERSITY

Brings campus crime reporting into line with current federal law (CLERY ACT)

KRS 164.948 and KRS 164.9485

SB 133 PREGNANT INMATES

Adds handcuffing limitations for pregnant inmates

Adds provision for filing for protective orders at shelters in addition to usual places.

KRS 196.173; KRS 403.725; KRS 456.030.

SB 137 RULES OF EVIDENCE

Creates a new Rule of Evidence to protect child witnesses (under 12) in testifying in court. KRE 804A

SB 142 TELE CPR

Institutes Telephone CPR as a requirement in basic training for telecommunicators.

Requires all PSAPs to use it, or have an agreement with one that does use it.

KRS 15.550

SB 182 MOTOR VEHICLES

Incorporates federal ATV standards into state law

Children under 6 may not operate an ATV, even under supervision

Minors under 16 may not have passengers on an ATV

KRS 189.515

SB 210 FELON IN POSSESSION

Increases penalties for Felon In Possession under KRS 527.040

KENTUCKY HOUSE OF REPRESENTATIVES BILLS**HB 22 UNMANNED AIRCRAFT SYSTEM**

A new section of KRS 500 relating to the use of UAVs.

Among other issues, limits the use of UAVs by LE to do a search unless a warrant is obtained.

May be used for other legitimate governmental purposes.

Denies the use of evidence collected under some circumstances.

Creates a crime under KRS 501 for offenses committed with a UAV
Crimes a crime under KRS 525 to interfere with the use of a UAV by an emergency responder.

Creates a definition under KRS 446 for a UAV.
“Citizens’ Freedom from Unwarranted Surveillance Act”

HB 33 BICYCLES

Provides a process for passing bicycles.

Requires a 3 feet buffer between vehicles and bicycles when possible.

Allows a vehicle to cross a no passing zone line if it can be done safely to pass a bicycle.

Limits bicycles to two abreast on a single highway lane unless in a bicycle lane.
KRS 189.300; KRS 189.340

HB 68 LAW ENFORCEMENT HEALTH AND WELLNESS

Mandates the DOCJT create a Law Enforcement Professional Development and Wellness Program. EMERGENCY

HB 68 LAW ENFORCEMENT HEALTH AND WELLNESS

Shall be offered at least twice per year.

Reports generated as result of participation in the program are CONFIDENTIAL AND PRIVILEGED from disclosure in any civil/criminal proceedings.

Information CANNOT be subpoenaed.

Disclosure exceptions:

- 1. Research and Data purposes.
- 2. Specific communication of actual threat against specific person.

HB 70 SEX OFFENDERS

Defines Electronic Communications (KRS 17.546)

Prohibits a sex offender registrant from using electronic communication to communicate with or gather information about a minor

Exceptions: not part of the sentence or the registrant is the parent of the minor.

KRS 17.546

HB 71 PRIVATE EROTIC MATTER

Creates new crime of distributing to a third party any privately taken sexually explicit images without written consent. KRS 531.120

HB 74 PAWNBROKERS

Amends KRS 226.040.

Mandates the keeping of an online log accessible to law enforcement.

Mandates collection of certain identification from those pawning or selling articles.

Requires a photo (in some cases) and descriptive information of items pawned or sold, to be available to law enforcement.

Requires LE to provide a case report or documentation for stolen items before seizure of such property by LE.

HB 96 FIRE INVESTIGATORS

Creates a position of “certified fire investigator” and “fire investigator.”
Authorizes appropriate firefighters serving as fire investigators to attend training through KLEC. Delayed Enactment 1/19/2019

HB 101 SEXUAL OFFENSES

Adds to Lack of Consent provision (KRS 510.020) and Defense (KRS 510.030) that a victim of 16 or 17 cannot consent to sex with an actor at least 10 years older.
Adds above to Rape (.060) and Sodomy (.090)

HB 120 CHILD PORNOGRAPHY

Adds to KRS 531 that child pornography or related evidence shall remain in the custody of LE or prosecutor, rather than with the court, unless used as a trial exhibit.
Denies the defense the right to make a copy of above material (although it must be made available for their use. **KRS 531.305**

HB 140 KLEPF / POBOR

Tweaks definition of peace officers in KRS 15.410 (KLEPF)
Increases supplement to \$4K and admin costs for agencies
Tweaks 15.520

HB 167 NEWBORN SAFETY

Adds staffed police stations (and other public safety locations) to the list of locations where a newborn may be surrendered safely. KRS 405.075

HB 168 RAILROAD CROSSINGS

Minor language changes in KRS 189.550 – from maintenance vehicles to “other on track equipment.”

HB 169 GANGS

Adds new penalties for crimes committed as a member of a criminal gang and for recruitment
“Gang Violence Prevention Act”
Encourages creation of a statewide gang violence prevention database **EMERGENCY**

HB 185 DEATH BENEFITS

Changes benefits for surviving spouses/children in a LODD situation.
Maintains insurance benefits.
Retroactive effective January 1, 2017
Named for Officers Nick Rodman and Scotty Hamilton

HB 193 BODILY FLUIDS

Adds all peace officers to Assault 3 charges for bodily fluid exchange, under specific circumstances.
Allows misdemeanor cites outside officer’s presence, under specific circumstances

HB 213 KASPER

Allows greater data sharing (with other jurisdictions) of KASPER data.

HB 275 SPECIAL DEPUTIES

Allows sheriffs to appoint more special deputies. **KRS 70.045**

HB 324 TRESPASS

Creates new crime of trespass on key infrastructure assets. **KRS 511.100**

HB 373 BODY-WORN CAMERAS

Changes to Open Records law concerning release (or non-release) of body-worn camera recordings. **KRS 61.168**

HB 530 VANITY PLATES

Changes expiration dates for vanity plates to birth month, like regular plates. **KRS 186.164 / .174**

U.S. SUPREME COURT 2017-18

District of Columbia v. Wesby, 138 S.Ct. 577 (2018)

ISSUE: May officers be held liable for making an arrest upon reasonable facts that a crime is being committed, even if it is later determined that arrest was incorrect?

HOLDING: Yes

Kisela v. Hughes, 138 S.Ct. 1148 (2018)

ISSUE: Is an officer entitled to qualified immunity if the law is not clearly established?

HOLDING: Yes

Byrd v. U.S., 138 S.Ct. 1518 (2018)

ISSUE: May an unauthorized driver in a rental vehicle still have an expectation of privacy in that vehicle?

HOLDING: Yes

Collins v. Virginia, 138 S.Ct. 1663 (2018)

ISSUE: Does the “automobile exception” justify an entry into the curtilage to obtain evidence?

HOLDING: No

Lozman v. City of Riviera Beach, 138 S.Ct. 1945 (2018)

ISSUE: May a case be pursued for a retaliatory arrest under the First Amendment even if probable cause for the arrest exists?

HOLDING: Yes

Carpenter v. U.S., 138 S.Ct. 2206 (2018)

ISSUE: Is a search warrant required for access to cell site location information for historical data?

HOLDING: Yes

Sexton (Warden) v. Beaudreaux, 138 S.Ct. 2555 (2018)

ISSUE: Is the reliability of a suspect identification a case-by-case evaluation?

HOLDING: Yes

**Kentucky and Federal Courts
Sixth Circuit Court of Appeals, Kentucky Supreme Court and
Kentucky Court of Appeals**

Penal Code and related offenses

KRS 500 – DEFINITIONS

Brown v. Com., 553 S.W.3d 826 (Ky. 2018)

ISSUE: Are stabbing injuries to the lungs a “serious physical injury?”

HOLDING: Yes.

KRS 503 – MENTAL STATES

Com v. Caudill, 540 S.W.3d 364 (Ky. 2018)

ISSUE: Is the wanton state of mind applicable in self-defense case?

HOLDING: No

KRS 510 – SPECIAL TRUST

Caldwell v. Com., 554 S.W.3d 874 (Ky. App. 2018)

ISSUE: May a family friend be in a “position of special trust?”

HOLDING: Yes

KRS 514 – THEFT

Hall v. Com., 551 S.W. 3d 7 (Ky. 2018)

ISSUE: Is taking a cruiser to escape necessarily a theft?

HOLDING: No

KRS 527 – FIREARMS

Sykes v. Com., 550 S.W.3d 60 (Ky. App. 2018)

ISSUE: Is a gun revealed only when someone raises his or her arms concealed for purposes of Kentucky law?

HOLDING: Yes

DOMESTIC VIOLENCE

Dunn v. Thacker, 546 S.W.3d 576 (Ky. App. 2018)

ISSUE: May a DVO be issued against a parent who allows another to harm his or her child?

HOLDING: Yes

DUI

Com. v. Riker, 2018 WL 6567681 (Ky. 2018)

ISSUE: Are hospitals limited on how much can be charged for an independent test?

HOLDING: No

Com. v. Crosby / Spellman, 2018 WL 3193074 (Ky. App. 2018)

ISSUE: Must the required observation period before an Intoxilyzer take place where test will actually be performed?

HOLDING: Yes

SEARCH WARRANT

U.S. v. Kemp, 732 Fed.Appx. 368 (6 Cir. 2018)

ISSUE: Must a nexus be shown between criminal activity and the location for which the warrant is sought?

HOLDING: Yes.

U.S. v. McCoy / Heard, 905 F.3d 409 (6 Cir. 2018)

ISSUE: Will good faith reliance on a search warrant that was erroneously issued permit the admissibility of evidence obtained as a result of the execution of that warrant?

HOLDING: Yes

U.S. v. Tagg, 886 F.3d 579 (6 Cir. 2018)

ISSUE: May probable cause be shown by a subject visiting a website that includes child pornography, even if that site also includes legal material?

HOLDING: Yes

U.S. v. Castro, 881 F.3d 961 (6 Cir. 2018)

ISSUE: Must the phrase "evidence of a crime" contained within a search warrant affidavit be read in a commonsense way?

HOLDING: Yes

U.S. v. Hines, 885 F.3d 919 (6 Cir. 2018)

ISSUE: If an affidavit includes the basis of knowledge for an unnamed informant's information, is that sufficient?

HOLDING: Yes

Greer v. City of Highland Park, 884 F.3d 310 (6 Cir. 2018)

ISSUE: Is knock and announce the default rule for a search warrant?

HOLDING: Yes

CONSENT

Harris v. Klare, 902 F.3d 630 (6 Cir. 2018)

ISSUE: Is a request to use the restroom, conditioned on consent to a search first, a coerced consent?

HOLDING: Yes.

CURTILAGE

Morgan / Graf v. Fairfield County (Ohio), 903 F.3d 553 (6 Cir. 2018)

ISSUE: Is it proper to enter a back curtilage during a knock and talk?

HOLDING: No.

CELL PHONE

U.S. v. Sweeney, 891 F.3d 232 (6 Cir. 2018)

FACTS: May probation and parole, which has a legitimate reason to search a phone, also share what is found with other agencies?

HOLDING: Yes

CONSTRUCTIVE POSSESSION

U.S. v. Ward, 2018 WL 1517180 (6 Cir. 2018)

ISSUE: Is a regular guest constructively responsible for items found in the bedroom the guest occupies?

HOLDING: Yes

COLLECTIVE KNOWLEDGE

Com. v. Blake, 540 S.W.3d 369 (Ky. 2018)

Com. v. Smith, 542 S.W.3d 276 (Ky. 2018)

ISSUE: May collective knowledge provide justification for a stop?

HOLDING: Yes

PLATE READERS

Traft v. Com., 539 S.W.3d 647 (Ky. 2018)

ISSUE: May an officer make a traffic stop when a license plate reader indicates that the registered owner of the vehicle has a warrant?

HOLDING: Yes, as there is no REP in a license plate.

INTERROGATION

Shively v. Com., 542 S.W.3d 255 (Ky. 2018)

ISSUE: Is simply talking to a suspect interrogation?

HOLDING: No

White v. Com. 2018 WL 4682487 (Ky. App. 2018)

ISSUE: Is being interviewed in one's own vehicle custodial?

HOLDING: No

EMPLOYMENT

KRS 15.520

Lanham v. Elliott, 540 S.W.3d 353 (Ky. 2018)

ISSUE: Do the due process provisions of KRS 15.520 apply to Kentucky deputy sheriffs?

HOLDING: No, under the prior version of KRS 15.520. Yes, under the current version of KRS 15.520.

Hutchinson v. City of Independence,
2018 WL 297270 (Ky. App. 2018)

ISSUE: Is telling an officer who is being questioned in an internal investigation that their pension is in jeopardy due to misconduct considered coercion?

HOLDING: No

For a handout that covers this Legal Review, please go to the DOCJT Legal Website.

If you have any questions concerning this presentation, please feel free to contact the Legal Training Section in one of the following ways:

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